

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1178 of 2006

Date of decision : 10.11.2006.

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Parties Name

Punjab Wakf Board, Bathinda

..... Petitioner

vs.

Smt. Gurtej Kaur and others

..... Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Arun Palli, Advocate
for the petitioner.

Sh. Binderjit Singh, Advocate
for respondent No.3.

Sh. H.C. Arora, Advocate for
respondent No.4.

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S.N. Aggarwal, J.

The petitioner-Wakf Board filed the civil suit against respondents No. 1 to 3 for possession of the suit land on the ground that it was leased out to Gurtej Kaur-respondent No.1, who had further rented it out to respondents No. 2 and 3. The suit was contested by these respondents. During the pendency of the civil suit, the petitioner-Wakf Board filed an application under Order 23 Rule 1 read with Section 151 CPC with the prayer that the suit be dismissed

as withdrawn with permission to file a fresh suit on the same cause of action. It was pleaded that said suit suffers from some formal defects. This application was contested by the respondents. The learned trial Court dismissed the application vide order dated 2.2.2006.

Hence, the present petition.

The submission of the learned counsel for the respondents was that the suit was instituted by the petitioner on 18.2.2001. Written statement was filed by the respondent-bank on 5.5.2001. It was filed by other respondents on 5.11.2001. Issues were framed. The parties led the evidence. The evidence is almost complete and the file is fixed for rebuttal evidence. It was also submitted that objection was taken in the written statement filed in 2001 that the suit was bad for non-joinder of necessary parties. Hence, it was prayed that the application for permission to withdraw the suit with liberty to file a fresh suit on the same cause of action, has been filed after a long delay and the same deserves dismissal.

On the other hand, the submission of the learned counsel for the petitioner was that Kulwant Kaur had filed an application under Order 1 Rule 10 CPC for being impleaded as a party. The said application was opposed by the petitioner. In spite of that, the said application was allowed by the learned trial Court vide order dated 4.4.2005. Said Kulwant Kaur had claimed to be the vendee having purchased the premises from M/s. Oriental Automobiles (Pvt.) Ltd., vide sale deed dated 14.10.2002. The petitioner filed an application, for amendment of the plaint so as to challenge the said sale deed but the said application has been dismissed by the learned trial court vide

order dated 22.7.2005. Therefore, the present suit suffers from some formal defects and the petitioner would not be able to get the relief prayed for.

The facts of the present case are quite peculiar. Although, Kulwant Kaur has been allowed by the learned trial Court to be impleaded as a party, but the petitioner has not been allowed to challenge the sale deed set up by her. Therefore, the suit certainly suffers from a formal defect.

The submission of the learned counsel for the respondents that the application for permission to withdraw the suit with liberty to file a fresh suit on the same cause of action has been filed after a long delay, has no legs to stand. The cause of action arose to the petitioner for filing the application after Kulwant Kaur was impleaded as one of the defendants and after the petitioner's prayer for amending the plaint for the purpose of challenging the sale deed set up by Kulwant Kaur was rejected.

This Court is satisfied that the suit suffers from formal defect.

In view of the peculiar facts of this case, the petitioner is permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action. Since, the respondents had faced the litigation for such a long time, therefore, the petitioner is burdened with costs of Rs.1,000/- per contesting respondent.

Disposed of.

10.11.2006.
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(S.N.Aggarwal)
Judge

